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APPELLANT'S BRIEF ON APPEAL

Serial No. 09/955,417

**METHOD AND SYSTEM FOR PRESENTING MERCHANDISE
AT AN OUTDOOR PAVED SURFACE**

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R al Party in Interest

The appealed application has been assigned to Outdoor Merchandising Solutions, LLC, a corporation of the State of Delaware having an office at P. O. Box 506, Sarasota, Florida, 34230-0506.

Related Appeals and Interferences

There are no related appeals or interferences known to the applicants, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

The claims under appeal are claims 1 through 26.

No amendments were made to the claims during the examination of the application and the claims under appeal are those as originally presented.

In an initial Office Action mailed April 24, 2003, claims 1-17 were rejected under § 112 (second paragraph) of the Patent Statute as being indefinite with respect to the terms "an overhead signage sight height from said surface to a top".

Claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool, U. S. Patent No. 2,638,636 (Pool) in view of Feleppa, U. S. Patent No. 5,700,102 (Feleppa) and Thornton, U. S. Patent No. 3,673,720 (Thornton) and Reilley, et al., U. S. Patent No. 5,120,941 (Reilley, et al).

Claims 18-26 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (supra), in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra).

Applicants responded to the Office Action on July 16, 2003. In that response no alterations to the claim program were made; 4 declarations drawn under the provisions of 37 CFR 1.132 were submitted and 27 requests under the provisions of 37 CFR § 1.104 (d) (2) were asserted.

In a second Office Action mailed October 24, 2003, claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (surpa) in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra) and additionally Glass, U. S. Patent No. 6,148,551 (Glass), one screen from a Flea Market Slide Show (Flea Market) and Howes, Jr., U. S. Patent No. 3,982,758 (Howes, Jr.). Claims 11 and 12 were additionally rejected over Duarte, another website screen.

Claims 18-26 were rejected under § 103 (a) of the Patent Statute as being unpatentable over Pool (supra), in view of Feleppa (supra) and Thornton (supra) and Reilley, et al. (supra) and Flea Market (supra) and Howes, Jr., (supra). In a component of the rejection entitled "response to arguments", applicants arguments with respect to claims 1-26 were indicated as having been

considered but as being moot in view of the new grounds of rejection. Further, the declarations filed under 37 CFR 1.132 were considered sufficient to overcome the rejection of claims 1-26 based upon Pool, Feleppa, Thornton, and Reilley, et al.

Applicants submitted a response to the second Office Action on January 15, 2004 asserting initially that the Flea Market and Duarte references were not printed publications within the meaning of 35 USC 102 (a) and (b) and further submitting four supplementary declarations drawn under the provisions of 37 CFR 1.132. Further, applicants submitted twenty-five requests under the noted provisions of 37 CFR § 104 (d) (2).

In a third non final Office Action mailed April 20, 2004, claims 1-17 were rejected under § 103 (a) of the Patent Statute as being unpatentable over a combination of eight references including Pool (supra), in view of Feleppa (supra), Thornton (supra), Reilley et al. (supra), Glass (supra), Flea Market (supra), Howes, Jr. (supra) and Barnes, U. S. Patent No. 3,940,139 (Barnes). Additionally, claims 11 and 12 were further rejected in view of Duarte (supra). Claims 18-26 were rejected under § 103 (a) of the Patent Statute, the Examiner citing Pool (supra) in view of Feleppa (supra), Thornton (supra), Reilley, et al (supra), Flea Market (supra), Howes, Jr. (supra), and Barnes (supra). In the "Response to Argument" portion of the rejection the Examiner indicated that the applicants arguments and declarations with respect to claims 1-26 were considered but were moot in view of new grounds for rejection. The twenty-five requests under 37 CFR § 104 (d) (2) were ignored.

Status of Amendments

No amendments have been filed subsequent to the third non final rejection mailed April 20, 2004.

Summary of Invention

The present invention is directed to a method and system for presenting merchandise such as lawn and garden products at an outdoor paved surface and, in particular, at the parking lot of a retail store. The system and method develops a retail environment at the parking lot on a seasonal basis which is tailored to the science of shopping. An initial insight to that science is provided by quotations from Underhill for instance, at page two of the application, Underhill is quoted to the effect that branding and traditional advertising do not necessarily evoke sales in the modern retail environment. Many purchasing decisions are made or are heavily influenced on the floor of a store itself. Underhill indicates that signage, shelf position, display space and special fixtures all make it either likelier or less likely that a shopper will buy a particular item. It is necessary to fashion displays such that shoppers can examine them comfortably and easily. A parking lot traditionally has been considered a detriment to the fostering of sales. The parking lots typically involve exhaust fumes, automobiles being poorly driven, debris strewn about and they typically exude the environment of a vast stretch of asphalt. The application again quotes Underhill at pages 3 and 4 where studies have shown that shoppers walk quickly with a "parking-lot stride" toward the entrance of a retail store. The typical shopper when initially entering a store from a parking lot will ignore upfront signage and the like, Underhill stating that if the sales staff hits a shopper at the entrance next to the parking lot with a "can I help you?" the answer is going to be a negative one.

As discussed at page four of the application, typical parking lot based lawn and garden sales regions have no characteristics lending to their identification from a distance nor establishing their mercantile function. The mercantile region should be identifiable from a distance. As a further criteria in the science of retailing, as discussed at page five of the application, Underhill indicates that regardless of what store designers and merchandise managers think, in many ways, the cash/wrap area is the most important part of any store. If the transactions are crisp, if the organization isn't clear at a glance, shoppers get frustrated or turned off. With the present invention, the seasonal nature of this form of merchandising is addressed through the employment of a permanent grid of in-ground anchors, each supporting an insertion sleeve and adjusted for pavement elevation variations. Poles of common height are erected by slidably inserting them within the sleeve of selected anchors and that selection of anchors within which to insert a pole is one which establishes the geometric boundaries of the merchandising region. Such a grid is shown in Fig. 9 and described at page 18 of the application. Anchors not selected by the retailer for the purpose of supporting poles are represented by empty circles, certain of which are shown at 244. For the demonstration of the

figure, the anchors which are utilized are shown in solid fashion at 246-259. The entrance to the merchandising region is represented at arrow 282 and its exit at arrow 284. An important shopper aisle is established at 280 extending between the entrance region represented at arrow 282 and the exit region represented at arrow 284.

Now looking to Fig. 1, the three dimensional merchandising region represented generally at 10 is seen to have a right side front region represented generally at 22 and a right side exit region represented generally at 24. Right side front region 22 is formed with elongate poles 14 and 15 which extend above the pavement surface 12 an overhead signage site height to a top represented respectively at 14b and 15b. Interconnecting pole tops 14b and 15b is a horizontally disposed upper signage support provided as a tensioned cable 26. Merchandise information signage as represented at signs 28 and 30 is suspended from the cable 26. Pole 15 in conjunction with poles 16-19 establish a right side region of the retailing geometric boundary as represented generally at 34. Poles 15-18 are mutually spaced apart a bay distance, for example, 10 feet and extend respectively from the surface at location 16a-18a at surface 12 to tops shown respectively at 16b-18b. Looking at one of the bays, it may be seen that signs 40-42 are suspended from a tensioned cable 38 and additionally are supported against wind induced movement by connection with a lower disposed horizontal retainer incorporating cable 44 which also is in tension (see additionally page 10 of the application). A second merchandising bay is seen extending between poles 16 and 17 and a third extends between poles 17 and 18. Poles 14 through 17 will have a height above pavement 12 of about 10 feet, while pole 18 will have a height of about 12 feet and is configured in combination with poles 76, 80 and 81 to define a canopy 74 configured with waterproof fabric which extends over a cash/wrap station counter and cash register represented generally at 90. Thus arranged, the canopy 74 draws the shoppers attention to the location of the cash/wrap station 90. An identical arrangement is provided for the left side of the merchandising region 10, the components thereof being represented with the same identifying numeration but in primed fashion. Sides 34 and 34' further function to define a shopper aisle represented generally at 120.

As described at page 12 of the application, merchandising systems as at region 10 may be positioned upon surfaces as at 12 which are located within a topographical region making remote visualization by prospective shoppers more difficult to achieve because of blocked vision. Signage to attain such remote shopper attention in such regions can be provided adjunctly to system 10 utilizing the modular larger poles as at 18 and 76 to support tall banner-like signage, for example, reaching to pole tops at 12 feet above surface 12. Such elevated signage is shown in Fig. 1 in conjunction with paired poles 100 and 102. As seen in Fig. 4, these poles extend respectively from the surface at locations 100a and 102a to pole tops 100b and 102b.

Horizontally disposed signage suspending support 104 extends between the pole tops 100b and 102b which, in turn, supports a thin sign 106. Support 104 is implemented with a tensioned cable. To support the lower edge of sign 106 a similar tensioned cable implemented support is shown at 108 extending adjacent surface 12. Figs. 1, 3 and 4 further reveal the presence of flag assemblies as at 92-96 which are attached to the top of the various vertical poles. These flag assemblies are vision stimulators as described at page 14 of the application, in effect, leading the shoppers' sight lines to the information provided at the overhead signage as at 40-42, 52-54 and 62-64.

Referring to Fig. 11 and page 22 of the application an exemplary anchor is portrayed receiving the insertion end of a pole 290. The anchor is formed with a cylindrical steel sleeve 412 extending vertically downwardly to an engagement surface defining bottom plate 416. The insertion end 428 of the pole 290 is in contact with the upper surface of bottom plate 416. Additionally, the poles are retained in position by a bolt and angle iron arrangement shown at 430. In this regard, a nut 424 is welded to the bottom of the angle iron for receiving a retaining bolt 436. Note that the top of the sleeve 412 at 414 is below pavement surface 294. When not in use, a cap as represented generally at 440 and seen in Figs. 12 and 13 is positioned over the top of the sleeve and bolted in place as represented again at bolt 436 and nut 424.

The seasonal merchandising region 10 is designed such that untrained retail clerks can assemble it. In this regard, tensioned cables and clips are employed. Figs. 10, and 15-17 detail the assembling approach. Looking to Fig. 10, two poles are illustrated at 290 and 291 extending above pavement surface 294. Insertion ends of the poles 290 and 291 (Fig. 11) extend a predetermined distance beneath the surface 294. The poles extend from the surface of pavement 294 to a top as shown respectively at 296 and 297 an arbitrarily defined overhead signage sight height (application page 19). Sight lines from the eyes of a shopper will be to the signage suspended from the vicinity of tops 296 and 297. The top region of each pole is configured with overhead top connector assemblies provided as four steel eyelets arranged symmetrically as shown in Fig. 15. Horizontally disposed signage support is represented generally at 304 in Fig. 10 and is implemented as a tensioned steel cable 306. To facilitate assembly of the upper support assembly 304, chain replacement links as shown at 310 and 312 are interposed between cable 306 and the next component of the assemblage. Chain replacement link 310 is shown connected to the eye of one threaded component end of a tension creating turnbuckle 314. The oppositely disposed threaded component eye of the turnbuckle 314 is coupled with a chain replacement link 316 which, in turn, is coupled with a spring activated snap clip 318. Clip 318 is coupled to an eyelet of the eyelet assemblage 300. Chain replacement link 312 at the opposite end of cable 306 is coupled with a similar snap clip 320 which, in turn, is

connected to an eyelet of the eyelet grouping 302. Waterproof fabric signs as at 322 and 324 are suspended from the assembly 304 by connectors as at 326, 328, 334 and 336. As described at page 20 of the application, extending in tension just below signs as at 322 and 324 is a horizontally disposed lower sign support or retainer assembly represented generally at 346 and structured identically as the upwardly disposed signage support 304. Sign 322 is connected to the lower sign support for retainer 346 by two breakaway connectors 368 and 370. Similar breakaway connectors are provided at 374 and 376 in connection with sign 324. As described in connection with page 21 of the application, the height from the pavement surface 294 to the top of the poles 290 and 291 and thus to the top region of the signage has been designated as an "overhead signage sight height". Correspondingly, the signage extends downwardly from the upper support within a shopper line of sight region to a bay access elevation above the surface 294 which may be represented as the elevation of the lower support or retainer assemblage 346. For the boundary identifying poles, that latter bay access elevation typically will be about 8 feet, an elevation appropriate for providing access for moving forklift trucks within the defined bay region. The distance between the bay defining poles as at 290 and 291 is referred to as a bay distance (page 21 of the application).

Issues

(1) Are www.accessduarte.com/communitydevelopment/permits.asp and www.sjfm.com/1.html "flea market slide show" page 1 printed publications within the meaning of 35 USC 102 (a) and (b)?

(2) Are claims 1-17 unpatentable under the provisions of § 103 (a) of the Patent Statute over a combination of nine references and further in view of the submittal to the record of eight declarations drawn under the provisions of 37 CFR § 1.132?

(3) Are claims 18-26 unpatentable under the provisions § 103 (a) of the Patent Statute in view of the citation of a combination of eight references and further in view of the submittal by the applicants of eight declarations drawn under the provisions of 37 CFR § 1.132?

Grouping of Claims

The claims do not stand or fall as a group, but rather are each separately and independently patentable.

Argument

(1) Are www.accessduarte.com/communitydevelopment/permits.asp and www.sjfm.com/1.html "flea market slide show" page 1 printed publications within the meaning of 35 USC 102 (a) and (b)?

As a component of the rejection asserted under § 103 of the Patent Statute, the Examiner has cited a page of a San Jose Flea Market installation website. While that page carries a copyright notice with a 1998 date, it has no posting date. The posting date for a reference looks to the critical aspect of "accessibility" in determining whether a document is a valid printed publication under the Patent Statute.

"Accessibility of a reference, rather than its receipt, is so critical because "accessibility" goes to the issue of whether interested members of the relevant public could obtain the information if they wanted to. If accessibility is proven, there is no requirement to show that particular members of the public actually received the information".

A Contemporary Patent Act: Finding a Useful Definition of "Printed Publication" in the Age of the Internet and On-line Research, J.M. Wright 85JPOS, No. 9, p. 739 quoting *Constant v. Advanced Micro-Devices, Inc.* 848 F 2nd 1560, 1569 (Fed. Cir. 1998).

The Manual of Patent Examining Procedure at section 2128 considers electronic publications as prior art and states:

Prior art disclosures on the internet or on an on-line data base are considered to be publicly available as the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied on as prior art under 35 U.S.C. 102 (a) or (b),...

There is clearly no indication of the posting date of this reference.

Also cited amongst many references asserting obviousness was the website of the City of Duarte, California and in particular, three pages thereof. Those pages carry a copyright notice of 2001, the same year the instant application was filed. There is no indication of a posting date on the document and therefore it is not available as a reference under the above-quoted provisions of the MPEP.

Notwithstanding their failure as printed publications under the Patent Statute, the references will be seen to be entirely irrelevant to the subject matter of the invention at hand.

(2) Are claims 1-17 unpatentable under the provisions of § 103 (a) of the Patent Statute over a combination of nine references and further in view of the submittal to the record of eight declarations drawn under the provisions of 37 CFR § 1.132?

In applying the above rejection, the Examiner has stated that Pool shows merchandise having given trade dress at an outdoor paved surface being presented, a retailing geometric boundary (34) at the paved surface, merchandise information signage displaced to advertise the merchandise (col. 3, l. 65-72 and col. 6, l. 25), the cash/wrap region (12-20) adjacent the shopper aisle, the signage being at the shopper's line of sight (col. 3, ll. 62-63), merchandise being located in correspondence with the merchandise information signage (col. 3, ll. 67-70), bay/niche containing merchandise.

Pool describes a drive-through grocery with a roadway extending within a fenced boundary. From the opening in the fence the driver encounters a wall (34) which the Examiner improperly construes as a geometric boundary as taught by the instant invention. That geometric boundary is defined such that merchants can allocate such a boundary within a paved parking lot to carry out seasonal marketing of goods which are suited for outdoor marketing purposes such as garden and lawn supplies. There is no merchandise information signage described in Pool. There is no signage described in Pool. What the Examiner is pointing to in Pool are a series of niches which are in the wall which are deep, the faces of which are enclosed in glass to define a showcase. Grocery products are displayed in these niche showcases. While the terms sign or signage do not as much as appear in Pool, the term showcase does. The term "showcase" is defined as a case with a glass top and sides used to display articles and protect them from dust and injury, as in a store or exhibition (Webster's New Twentieth Century Dictionary, 2nd Edition).

Pool uses the term "showcase" accurately to describe the wall niches. With the Pool approach to merchandising groceries, customers remain in their cars and proceed to order-cashier booths somewhat resembling highway tollbooths. Those booths are not cash/wrap stations. There is no "wrap" function. See the supplemental declarations of Kern and Baughman in the record. The customer then picks up the merchandise at an enclosed building 22. Note that there is a parking lot referred to as a "parking yard 56". Nothing occurs in that parking lot which is the facility utilized by the instant invention. The shopper line of sight region described in claim 1 is carefully defined with respect of the top of the poles and the overhead signage height, the signage extending downwardly from the signage support which is located at the top of those poles. That line of sight described in Pool is one from an automobile which in 1951 would have

been about 4 1/2 feet and presumably substantially horizontal. See the supplemental declaration of Kern in the record. Of more importance, there are no signs described in Pool. The Examiner indicates that the merchandise is located in correspondence with the merchandise information signage. There is no signage described in Pool and the merchandise, while having an exemplary display in showcases, is picked up from building 22. In claim 1, anchors and sign interconnected poles combine to define bay distances and bays and the claim also positions merchandise within the bay below the bay access elevation, i.e., the bottom of the signs, and locates the merchandise in correspondence with the merchandise information signage. There are no signs in Pool and the merchandise is not described as being positioned below such carefully claimed sign and pole structuring as set forth in claim 1.

Pool clearly teaches against the concept of the present invention which is to get away from the undesirable atmosphere of a retail parking lot. Pool keeps the automobile motors running with the exception of having a parking lot with nothing added to it for merchandising purposes. Page 3 of the instant application describes that the parking lot itself traditionally has been considered a detriment to the fostering of sales. Such parking lots typically involve exhaust fumes, automobiles being poorly driven, debris strewn about and they typically exude the environment of a vast stretch of asphalt. That's Pool. See the supplemental declarations of Kern, Baughman, Descenzo and Wood in the record.

The Examiner then details what Pool does not show, essentially paraphrasing claim 1.

Next the Examiner asserts that Feleppa (Fig. 88) shows a market place having a plurality of poles forming a retail area, the poles extending from the ground to a top. Feleppa shows a rigid tent structure and, in fact, doesn't show ground. Feleppa describes (Fig. 88) as follows: "FIGS. 66-93 show, as perspective stick figures, various frame configurations formed by rigid elongate elements joined together by connectors formed by assemblies of the modules of the invention". Fig 88 is a tent, (at least the patent describes them as shelters) with the top carrying a sign positioned above the tent ceiling. The Examiner is utilizing total speculation in calling Fig. 88 a marketplace. The sign can be used for identifying other produce selling locations, for example, the tent could be used as a storehouse. The Examiner is not entitled to guess the meaning of the tent in applying a rejection. The Examiner has not identified and could not identify how one would be constrained to put those poles around the fence or wall of Pool and end up with Fig. 1 of the instant application. Where is the nexus that shows that the tent would be erected in the parking lot of Pool? There is none. As the applicants describe in the background of the instant application, the use of tents to sell outdoor products in parking lots heretofore has been deemed not to be cost effective and little if no signage is utilized, Of course, if produce

were sold in the tent of Fig. 88 of Feleppa, the customer couldn't see the sign because of the shelter roof. See the supplementary declarations of Kern and Baughman in the record.

Next the Examiner states that Reilley, et al. (Figs. 1-2) shows a retail area having bays with merchandise signage (50) hanging from the signage support supporting merchandise information (54) positioning the merchandise within the bay/niche below the bay access elevation. While Reilley, et al. shows a retail area, that retail area is a conventional shelf supporting heavy bag merchandise. Reilley, et al. describes "price channels", not signage support as described by the Examiner. On those channels are pads carrying product identification marketing information and in accordance with the Reilley, et al. invention, UPC symbols. Instead of having to carry the heavy bags, the customer simply tears off a slip and takes it presumably to the cashier. The Examiner is incorrect in describing signage hanging from the signage support. The Examiner is incorrect in describing that the merchandise is positioned within the bay/niche below the bay access elevation. Bay access elevation is accurately defined in the instant invention and in claim 1 in connection with the step describing how the signage extends downwardly (see also page 21, l.16 of the application).

Next the Examiner states that Thornton (Fig. 1) shows a plurality of poles extending into sleeves (57) in the ground to support the poles, the poles being connected at the tops (34) with signage. Thornton shows two poles, not a plurality of poles, which stick in the ground and support a sign which slides up and down on the poles so that the lettering on the sign can be changed. Claim 1 calls for interconnecting the pole tops together with a horizontally disposed signage support to define a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent poles. Thornton just shows signs. Applicants query how Thornton can be construed to turn Pool into the facility shown in Fig. 1 of the instant application. There is no relationship and one would not be drawn to combine Pool with any of the references to achieve the facility, for example, shown in Fig. 1. See the supplemental declarations of Dascenzo and Wood in the record.

Next, the Examiner describes that Glass discloses banner being made of nylon. Glass shows a large inflated balloon, a portion of the surface of which is configured to removably retain very large message banners, i.e., 6 feet wide and approximately 4 feet high. These nylon message banners are attached with Velcro and include plastic letters/numbers. Thus, the large banner is merely a sign and not a nylon flag assembly. As set forth in the supplemental declaration of Dascenzo in the record, nylon material is used to achieve a visual stimulation to the signage below the flags. Pennants formed of other materials were not effective as a sight stimulator as was nylon. The stationary nylon sign with plastic letters does not provide that function whatsoever.

Next, the Examiner has provided a prolix sentence indicating that it would have been obvious to modify Pool. Pool must be shown to be logically combined with the secondary references. What the Examiner has done has been to import the language from the claims of the instant application into the references while avoiding the different technology with different meaning employed in the references.

"[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious... This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'"
In re Fritch 972 F2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

It is impermissible to use the inventor's disclosure as a "road map" for selecting and combining prior art disclosures. See *Interconnect Planning Corp. v. Feil* 774 F2d 1132, 227 USPQ 543 (Fed. Cir. 1985).

Using terms imported from the specification and claims of the instant application and using the applicants own disclosure as a road map, the Examiner then states that it would have been obvious to "modify" Pool to show "...a plurality of anchors about the boundary extending below the surface and mutually spaced apart to establish bay distances, each said anchor having a vertically disposed sleeve having a support distance located below the paved surface,...". The only bay distance shown in the art cited is a shelf width. The only anchors are two anchors supporting a slidable sign and anchors for netting around half of a tennis court. There is no bay distance associated with the slidable sign. The Examiners' analysis is improper and incorrect.

Next, the Examiner asserts that it would have been obvious to "modify" Pool to show "...a plurality of first poles having ends inserted into the sleeve,...". The only poles shown in the cited art are poles presumably holding up a tent, two poles holding up a slidable sign and poles holding up a tennis court peripheral barrier. The Examiner ignores the provisions of the third substantive paragraph of claim 1 wherein the first poles have an insertion end configured for slidable insertion to the extent of said support distance within a said sleeve and extensible, when inserted within the sleeve, an overhead signage sight height from said surface to a top. One queries where one would put the pole and the anchors in Pool? There is no relationship between the references which would make their combination logical to suggest Fig. 1 of the instant application and the provisions of claim 1.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...overhead signage extending downwardly from the signage support within a shopper line of sight region to a lower border adjacent a bay access elevation above the surface,...". None of

the references show overhead signage extending downwardly from the claim defined signage support and within the claim defined shopper line of sight region. None of the references show a lower border adjacent a bay access elevation above the surface. It simply doesn't exist in any of the references.

Next, the Examiner asserts that it would have been obvious to "modify" Pool to show "...the poles within the sleeves defining a retail floor,...". The fourth substantive paragraph of claim 1 describes positioning the first poles within said anchor sleeves to define a retail floor pattern having an entrance region and a shopper aisle extending therefrom to a shopper exit region. None of the references describe poles within anchors defining a retail floor pattern with the noted entrance, aisle and exit. In fact, the entrance of Pool is a distance between wall 34 and a curb and its exit is the distance between a fence and curb 66. There are no poles and there is no reason to have them in Pool. Next, the Examiner asserts that it would have been obvious to modify Pool to show "...interconnecting the pole tops with horizontally disposed signage support to define a three dimensional retailing region with a select number of merchandising bays extending adjacent the poles from at least a portion of the geometric boundary to the shopper aisle,...". None of the references show an interconnection of pole tops with a horizontally disposed signage support to define a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of said geometric boundary to said shopper aisle. The only pole interconnection shown in any of the references is a connection of two poles to support a slidable sign and poles to support two sides of a tennis court boundary fence. Thornton does not show nor possibly suggest the interconnection defining a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of the geometric boundary to the shopper aisle. Claim 1 requires that the poles are positioned within the anchor sleeves to define the retail pattern with the aisle. The Examiner is simply following the noted road map provided by the applicants' own disclosure. See the supplementary declaration of Dascenzo in the record.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...suspending merchandise information signage from the signage support at said boundary along the bays,...". The references show no signage supported at a boundary along bays. That's because there aren't any bays in any of the references which are associated with a paved surface.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...positioning the merchandise within the bay/niche below the bay access elevation because having a plurality of poles extending into anchors/sleeves in the ground to define a retail area

would provide for easy and quick assembly of the retail boundary as taught by Thornton and Feleppa,...". None of the references, taken singly or in combination show a bay access elevation. How can a sliding sign with two poles be suggested as being combined with Pool. There is no suggestion of placing a tent as taught by Feleppa in Pool. Where would it be placed to define a bay area? There is no rationale whatsoever in combining these references to meet the criteria of claim 1 and the approach taught in the present application.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...overhead signage extending downwardly from the signage support within a shopper line of sight region to a lower border adjacent a bay access elevation above the surface would allow for the easy advertisement of the available products as taught by Thornton and Glass,...". Thornton only teaches a slidable sign and two poles. Glass shows an inflatable balloon with a large Nylon banner fixed to it with Velcro. None of the references show a signage support with overhead signage within a claim-defined shopper line of sight. None of the references show a border adjacent a bay access elevation above the surface.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...having a plurality of merchandising bays extending adjacent the poles and suspending merchandise information signage from the signage support at said boundary along the bays would enable the separate advertisement of the available merchandise as taught by Thornton and "Flea Market Slide Show",...". There are no merchandising bays shown in Thornton, just a sign slidably supported upon two poles. The Examiner has only submitted one display from the Flea Market reference. Assuming (arguendo) that it is a valid reference, as annexed to the four supplemental declarations in the record, the whole website is presented. That website shows an outdoor emporium on 120 acres with an installation map showing permanent buildings and a separate parking lot. Figures in the entire website show only permanent buildings and spaces. It shows a stage for outdoor entertainment in conjunction with food services. The only retail merchandising facility disclosed in the entire website is one within a permanent building. The applicants are entitled to look at the entire document not just one incorrectly implying a "canopy" to support the Examiner's unusual theory of obviousness. Flea Market, in fact, teaches against the precepts of the present invention. It shows merely a sign hanging in a permanent building. Its combination with the other references is not suggested whatsoever.

Next, the Examiner asserts that it would have been obvious to "modify" Pool to show: "...and positioning the merchandise within the bay/niche below the bay access elevation would enable easy showing and storing of the display merchandise." The references, whether taken singly or in combination, fail to show or suggest this step of positioning the merchandise within

the bay below the bay access elevation and locating the merchandise in correspondence with the merchandise information signage.

In rejecting claims 2-3, the Examiner asserts that Pool as modified shows all the claimed limitations except for the flags being supported on the poles, the flag assemblies being provided as pennants formed with nylon. With this rejection, the Examiner combines Eleppa as showing flags being supported on poles and Glass as disclosing a banner made of nylon. First of all, the banner of Glass is not a flag nor is it a pennant. It is a stationary sign fixed to a balloon with Velcro.

As stated at page 14 of the application, the flag assemblies 93-98 are perception stimulators, in effect, leading the shoppers' sight lines to the information provided at the overhead signs as at 40-42, 52-54 and 62-64. See the supplemental declaration of Dascenzo in the record. There are no poles nor are there any flags, nor are there any merchandise signs in Pool. Eleppa shows a tent, a sign over its top which cannot be seen from inside the tent and two pennants which are not positioned upon the signage supporting poles. Glass does not suggest the utilization of flags or pennants formed of nylon as sight stimulators to lead the customer's sight to signage set below. Glass is a sign in and of itself and has no movement. In fact, the Glass patent teaches techniques for maintaining the balloon in a physically steady state against swaying and the like. The references are improperly combined.

Further in applying this rejection, the Examiner has asserted that it would have been obvious to modify Pool's modified structure to show "...the flag is being supported on the poles because having flags on the poles would attract the peoples attention to the installation and thus enhance sales of product as taught by Eleppa,...". Claims 2 and 3 require that the flag support structures and flags be at the top of the poles. The tops of the poles are carefully defined in claim 1 and, as noted above, the flags are present to attract the customers' eye to the signage and away from the undesirable atmosphere of a parking lot. Pool, at best, suggests an even worse atmosphere. As part of this rejection, the Examiner further states: "...and having the flags as pennants formed with nylon would have been obvious as pennants is a well-known flag shape and nylon is a well known flag material as shown by Glass". The term flag does not appear in Glass. Glass shows a large nylon sign fixed to the side of a large inflated balloon. There is nothing in Glass to suggest that nylon is a well known flag material. As shown in the Dascenzo supplemental declaration in the record, nylon, indeed, is unique for the purpose at hand and its selection followed research in this field.

Next, the Examiner asserts that: "Pool as modified shows all the claimed limitations. The claimed method steps of presenting merchandise would have been obvious method steps of

presenting Pool's merchandise". This statement is entirely incorrect for reasons as given above and as set forth in the annexed supplemental declarations.

Next, the Examiner looks to claim 4 and asserts that Pool as modified shows all the claimed limitations except for the shelter being a canopy. That statement is incorrect for reasons given above. One queries where one would put the canopy on Pool. In the parking lot? There is no retail merchandising going on in that parking lot. Alternately, a canopy could be installed in the roadway. That does not seem logical.

Next, the Examiner states: "'Flea Market Slide Show" shows a canopy covering a marketplace to provide shelter." As noted above, when looking at the entire website, that is not what the Flea Market reference describes and illustrates. The only illustration showing the use of a marketplace is one involving a permanent building. There is no showing in any of the pictures to indicate that any of the overhead covers are not permanent. What the entire website shows is that the Flea Market is in San Jose, California where any overhead covers are of a permanent building nature. In applying this rejection, the Examiner has indicated: "It would have been obvious to one have ordinary skill in the art at the time of the invention to modify Pool's modified structure to show the shelter being canopy because a canopy is well known in the art for covering an outdoor cashier area as taught by "Flea Market Slide Show". The Flea Market reference does not show a canopy over a cashier area. In fact, the only merchandising region described in Flea Market is within a clearly permanent building installation. Reference is made to all four supplemental declarations present in the record.

Next, in rejecting claims 5-6, the Examiner has asserted: "...Pool as modified shows all the claimed limitations except for the step of suspending the merchandise information signage establishing the bay access elevation as about eight feet, the sight height having a range of between 10 feet to 12 feet. "Flea Market Slide Show" shows signage "Cigars" being about 10-12 feet to advertise a product below." The Examiner's statement is incorrect. The singular display elected by the Examiner out of the entire website actually shows a permanent building with patrons drinking some form of beverage. There is a sign carrying the word "cigars" but it is inside a permanent building. Claim 5 requires that the merchandise information signage establish a bay access elevation of about eight feet. There is no bay access shown in the singular figure elected by the Examiner. The only merchandising that takes place in the flea market reference is in a permanent building at sheet 6x of 10. In that permanent building the number of signs appear quite sparse. The flea market reference shows no applicability to the method of presenting merchandising now claimed. See the supplemental declarations of Baughman and Kern in the record.

Further, in rejecting claims 5-6 the Examiner has stated: "It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Pool's modified structure to show the step of suspending the merchandising information signage establishing the bay access elevation as about eight feet, the sight height having a range of between 10 feet to 12 feet because having the bay access elevation about eight feet provide for an easy and unrestricted access area below the bay for merchandise, and having the sight height having a range of between 10 feet to 12 feet would enable a person to view the signage without having to look too far up and thus increases a person's willingness to read the signage for information as taught by "Flea Market Slide Show". People driving their car through Pool won't be able to look up at such sight heights. People inside the Feleppa tent won't be able to see the signs or pennants at all. The Examiner is using the applicants own disclosure as a road map. As noted above, Flea Market Slide Show illustrates a sign hanging in a permanent building structure. The underlying idea of the instant invention is to improve an area outside of a building as shown in Fig. 1. In effect, Flea Market teaches against this concept.

In rejecting claim 7 the Examiner has asserted that it would have been obvious "...to one having ordinary skill in the art at the time of the invention to modify Pool's modified structure to show the spacing of the anchors about 3 feet to 20 feet because it would allow for sufficient space to position outdoor merchandise." There is no outdoor merchandise positioned in a bay region in any of the reference nor is there a suggestion to do so. Again, the Examiner is using the applicants own description as a road map in rejecting the claims.

In rejecting claim 8, the Examiner has cited Howes, Jr. as showing a plurality of covers (14). While Howes Jr. may show covers it does so in connection with a tennis court. The reference does not combine with the others to show all of the limitations of parent claim 1 for reasons given above.

In rejecting claim 9, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show the shopper aisle, the entrance region, and the exit region having widths of about 10 feet because it would ensure the easy passage of cars in the store." There are no references to support that statement.

Claim 10 looks to the step of interconnecting each pole top. The next adjacent pole top using a tension cable assembly as a horizontally disposed signage support. The use of a tensioned cable assembly makes it easier for untrained store personnel to assemble the marketing region. The cables are easy to attach and when so attached, the signs are easily connected to those cables. The cited Barnes reference shows a winch-type tensioning system for a volleyball net. As made evident by the supporting cables 15 in the reference, such an arrangement, as applied to the instant merchandising region would bend the poles. The Barnes

reference does not suggest the use claimed. In rejecting claim 11, the Examiner has combined Pool with the Duarte web page at page two and states that Duarte discloses banner being supported on cable snaps on both the top and bottom edges of the banner. Assuming (arguendo) that it is a valid reference, Duarte discloses a local government regulation requiring that a 13 oz reinforced web vinyl banner shall have the size of four feet times four feet wide times 10-30 feet long. That defines an elongate tube having a square cross-section. The banner is to be mounted on something. The reference does not say what the cable snaps at the top and bottom with two feet on center are attached to. Claim 11 describes the assemblage shown in general at 346 in Fig. 10 of the application and calls for the provision of a horizontally disposed lower signage support interconnecting adjacent poles at about the bay access elevation. There is nothing in Duarte or, for that matter in any of the references to suggest a bay access elevation. Additionally, there is no signage support described in Duarte. Further, in applying the rejection, the Examiner has stated that it would have been obvious to modify Pools' modified structure: "...to show a horizontally disposed lower signage support interconnecting a said pole with said next adjacent pole at about the bay access elevation, coupling the horizontally disposed lower signage support with the signage adjacent the lower border as taught by Duarte because a lower signage interconnecting the poles at about the bay access elevation and adjacent the lower border would enable a customer to distinguish and identify merchandise beneath the bay access elevation." The Examiner makes the statement without any documentary support. There is no bay access elevation as claimed and defined in any of the references and there is no horizontally disposed lower signage support adjacent the lower border as defined in the claims suggested in any of the references or combinations thereof. The Examiner is using the applicants own teaching as a road map.

The Examiner applied the same references with respect to claim 12, dependent upon claim 11, in calling out that the step of coupling the horizontally disposed signage support is carried out with breakaway couplers configured to break in response to assertion of a predetermined wind load upon the signage. In applying the Duarte regulation the Examiner states that it would have been obvious: "...to modify Pool's modified structure to show break away couplers coupling the signage support as taught by Duarte because break away couplers coupling the signage support would allow the support to break away preventing damage to the signage and people who accidentally bumps against the structure once a maximum amount of allowable force is exceeded..". There is no suggestion whatsoever in the Duarte reference that breakaway couplers responsive to wind load are to be employed. In fact, "wind pockets" are called for. Thus, the reference teaches away from breakaway couplers. See the Dascenzo supplemental declaration in the record.

Claim 13, dependent upon claim 12 looks to utilizing a tensioned cable assembly for the horizontally disposed lower signage support. The applicants assert the same response to this rejection as applied in connection with claim 10 above. With the exception of Barnes, there is no tensioned cable assemblies suggested in any of the references. Barnes on the other hand shows a winched cable system which (a) would bend the poles and (b) doesn't suggest the supporting of the lower portion of advertising signage. It further may be noted that the Barnes reference was not utilized in the rejection of claim 13.

Claims 14-15 look to the tall vertically oriented banners 106 and 106' shown in Fig. 1 of the drawings of the application. In rejecting these claims the Examiner has asserted that it would have been obvious "...to modify Pool's modified structure to show two said anchors adjacent the boundary mutually spaced apart a banner width distance, two second poles each having an insertion end configured for slidable insertion to the extent of the support distance within a said sleeve of one of the two anchors, the second pole being extensible when inserted within a said sleeve, the second pole height from the surface of the second pole top greater than the overhead signage sight height, an upper banner support assembly extensible between the two second poles, removably horizontally coupling the upper banner support assembly between the two second poles adjacent the second pole tops, suspending a remotely viewable banner from the upper banner support, two said anchors adjacent the boundary locates the two anchors adjacent the entrance region because having two poles taller than the signage support at the entrance supported in sleeve with upper banner coupled to the two poles would allow a potential customer to view the installation at a distance and be attracted and enters the installation, and thus resulting in better sales".

The only entrance shown in the references is the space between a wall and a curb. The references show no anchors as claimed; no poles having different heights; no upper banner support assembly extending between the poles of the second height; no removable horizontal coupling of the upper banner support assembly; and no banner suspended from that upper banner support. See the supplemental declaration of Kern in the record. Again, the Examiner is simply using the applicants disclosure as a road map and is simply paraphrasing the claims without the support of any documentation.

Claim 16 is dependent upon claim 1 and looks to the provision of anchors wherein the sleeves have a base plate at an elevation with respect to the paved surface selected to effect a linear alignment of the first pole tops. In rejecting this claim, the Examiner has asserted that it would have been obvious: "...to modify Pool's modified structure to show the step of providing a plurality of anchors having a base plate at an elevation with respect to the paved surface to

effect a linear alignment of the first pole tops because it would enable the tops of the poles to have the same height which would result in aesthetic appearance for the retail store.

This statement is made without any supporting documentation. Again, the Examiner is using the applicants own disclosure as a road map in rejecting the claims. Note that he has simply paraphrased the claims and given a personal reason for obviousness.

Claim 17, dependent upon claim 1 looks to the provision of the anchors in regularly spaced relationship defining a geometric grid and, further, the step for defining a retail boundary defines the boundary by selecting anchors with that geometric grid. While the claim has been rejected, the Examiner has made no comment as to why. Note the grid in Fig. 9 and that there is no such grid shown or suggested in any of the references whether taken singly or in combination.

(3) Are claims 18-26 unpatentable under the provisions § 103 (a) of the Patent Statute in view of the citation of a combination of eight references and further in view of the submittal by the applicants of eight declarations drawn under the provisions of 37 CFR § 1.132?

The Examiner has substantially ignored the recitations of claim 18 in applying the above rejection. Notwithstanding this aspect of the rejection, the Examiner interprets the references out of context. As noted above, Pool describes a drive-through grocery having a so called retail boundary which includes a fence and a sequence of showcases. The showcases are observed from car window level which the Examiner identifies as the shoppers line of sight. The Examiner states that there is signage described in Pool. There is not. The claim calls for an overhead signage sight height which is defined and is quite different than the billboard sighted from an automobile window. The objective of the patent is to display grocery products and then drive forward to a toll booth and order it. The only aspects of claim 18 which the Examiner has identified corresponds with the opening paragraph and a recitation of a plurality of merchandise information carrying signs. There is no description whatsoever in Pool of a merchandise describing sign.

Of the nine paragraphs in claim 18 the Examiner has equated Pool with a mere two of those paragraphs. Having described how Pool applies in the rejection in six lines, the Examiner describes how Pool does not apply in eighteen lines. Looking to the paragraphs of claim 18, it may be observed that Pool does not describe a plurality of anchors; a plurality of first poles of first height; an overhead top connector assembly; a plurality of upper signage support assemblies; a plurality of merchandise information carrying signs suspended from select said upper signage support assemblies; does not describe a retainer connection assembly; does not describe a plurality of lower signage retainer assemblies; and does not describe a plurality of lower couplers. That list encompasses every substantive paragraph in claim 18.

The Examiner then describes Feleppa as showing a market place having a plurality of poles forming a retail area, the poles extending from the ground to a top. Feleppa doesn't describe that. Feleppa describes a frame configuration utilized as a shelter. While Fig. 88 of the reference shows a fresh produce sign on top of a stick figure, there is no description that the sign indicates what is below it. The term retail does not appear in the patent. Whatever shelter was intended is not disclosed and the shelter shown could be, for example, a storage tent with a general area sign sticking above it. The Examiner cannot read into a reference what is not there. Additionally, Feleppa is not properly combined with Pool. Why would Pool want to erect a tent upon his driveway? Why would Pool want to erect a tent on his parking lot which has no

merchandising? How could one construe the frame structure of a tent as suggesting the erection of a plurality of poles defining a merchandising region in carrying signage between them?

The Examiner then identifies Reilley, et al. as showing a retail area having bays with merchandise and signage. Reilley, et al. shows a conventional shelf with shelf-mounted tear-off strips which carry a UPC symbol. As noted above, claim 18 requires that the signage support assembly be removably coupled with overhead top connector assemblies. That feature cannot be construed from Reilley, et al. and the instant invention cannot be manipulated into a combination of Reilley, et al. with Pool. Pool might use the product code carrying tear-off sheets from Reilley, et al. to carry to its cash booth. However, more than likely this would require the customer to get out of his or her car to access the sheets. Notwithstanding such questionable improvement to Pool, the combination bears no applicability whatsoever to the instant invention as claimed.

Thornton is cited to show a plurality of poles extending into sleeves in the ground to support the poles, the poles being connected at the tops with signage. Thornton shows a large sign which slides on two poles which are mounted in the ground. The poles aren't spaced a bay distance and there is no sleeve engagement surface. It should further be noted that two poles are not a "plurality" of poles.

Next, the Examiner states that Howes, Jr. shows a plurality of covers (14) covering a plurality of sleeves when the sleeve is not engaged with the poles to cover the holes against debris and people tripping, the insertion ends of the poles being in freely abutable contact with the sleeve engagement surface. There are no covers recited in claims 18-26. There is no sleeve engagement surface in Howes, Jr. That surface is described in Fig. 11 at 416. Additionally, in none of the references are anchors mutually spaced apart a bay distance.

Flea Market was cited as showing a signage carrying the term "Cigars" as being about 10-12 feet to advertise a product below. As noted above, the Examiner withheld the entire website. The only retail merchandising shown in that website is involved with a permanent building. The singular photograph relied upon by the Examiner at page two of ten on the website is misleading. That type facility also is described at page 10 of 10 at the website and it is clearly a permanent structure. The homepage further describes that the flea market property encompasses about 1,000 small buildings and 1,000 open air stalls. The homepage further describes that the buildings and open spaces can be reserved by the month. Indeed the buildings are permanent. The reference flies in the face of the precepts of the present invention. See the Baughman supplemental declaration in the record.

Next the Examiner asserts that it would have been obvious to "...modify Pool to show a plurality of anchors fixed beneath the surface in a geometric pattern within the retail region boundary, at least two of the anchors being mutually spaced apart a bay distance, each of the anchor having a vertically disposed sleeve having a support distance located below the surface and extending to an engagement surface, a plurality of first poles of first height, each pole having a top and an insertion end slidably inserted in the sleeve, the insertion end being in freely abutable contact with the sleeve engagement surface, the poles defining a merchandising region exhibiting an entrance region, a shopper aisle, and an exit region,...". None of the references, taken singly or in combination describe a plurality of anchors in a geometric pattern within a retail region boundary. None of the references, taken singly or in combination describe that two of the anchors are mutually spaced apart a bay distance. None of the references describe a sleeve assembly combined with an engagement surface as described at 416 in the application. None of the references describe that the first poles are inserted within the anchors in mutually spaced adjacency to define a merchandising region exhibiting an entrance region, a shopper aisle and an exit region. See the Kern supplementary declaration in the record. The Examiner is merely following the noted road map of the applicants own disclosure to assert an unwarranted rejection.

Next the Examiner has asserted that it would have been obvious to modify Pool to show "...said pole establishing an overhead signage sight height from the surface to the top, an overhead top connector assembly fixed to each of the first pole adjacent the top, a plurality of signage support assemblies removably coupled to the overhead top connector assemblies to define a boundary of the merchandising region including the entrance region,...". The references do not suggest the utilization of poles to establish an overhead signage sight height which, in itself, is defined within the claims. The overhead top connector assemblies are described in the application, for example, at 342 and 344 in Fig. 10. There are no such connector assembly described or suggested in any of the references. The references do not describe or suggest a plurality of signage support assemblies removably coupled to the overhead top connector assemblies to define a boundary of the merchandising region including the entrance region. Again, the Examiner is utilizing the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...a plurality of signs suspended from the upper signage support assemblies and extending downwardly therefrom to a lower border to define a shopper line of sight region,...".

The Examiner omits that the signs are merchandise information carrying signs. None of the references taken singly or in combination show or suggest such a plurality of information

carrying signs which are suspended from select upper signage support assemblies and which extend downwardly to a lower border. Recall that the upper signage support assemblages are removably coupled with the overhead top connector assemblies. That combination is nowhere suggested in any combination of the references. Again, the Examiner is using the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...a retainer connection assembly fixed to each of the first pole at a location defining a bay access elevation above the surface when the poles are inserted within the sleeves,...". These retainer connection assemblies are described in the application in connection with Fig. 10, for example, at 358 and 366. None of the references, taken singly or in combination teach or suggest such a retainer connection assembly; or such an assembly being fixed to first poles at a location defining a bay access elevation. None of the references teach the presence of a bay access elevation and that the bay access elevation is developed when the poles are inserted in the sleeves. The Examiner is simply paraphrasing portions of the claim and thus is using the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show "...a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with the upper signage support assemblies,...". Such lower retainer assemblies are shown, for example, at 346 in Fig. 10. None of the references, taken singly or in combination show a plurality of lower signage retainer assemblies which are removably coupled between retainer connector assemblies as claimed. None of the references show the parallel relationship of such an assembly with an upper signage support assembly which also is not suggested in the references. Apparently, the Examiner again is using the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...a plurality of lower couplers removably connected between the lower signage retainer assemblies and the lower border of the signs because having a plurality of poles extending into anchors/sleeves in the ground to define a retail area with the insertion end being in freely abutable contact with a sleeve engagement surface would provide for easy and quick assembly of the retail boundary as taught by Thornton and Feleppa and Howes, Jr.,....". These lower couplers are shown, for example, at 368 and 370 in Fig. 10 of the application. Such couplers were they used as claimed are not disclosed or suggested by any of the references, taken singly or combined. The addition of Howes, Jr. adds nothing to this combination of references. Again, the Examiner is utilizing the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...having removable overhead signage attached to connectors at the top of the poles would allow for fastening of the signage to poles and advertising of merchandise as taught by Duarte "street banner pole",...". As discussed above, Duarte is a homepage for the City of Duarte, California. The document is concerned with obtaining permits from the city. The second page of the document describes an elongate square tube banner. Street banner poles are mentioned but there is no description of them whatsoever. The regulations appear to suggest that at least certain of the banners are hung across public rights of way. The reference is completely deficient in terms of suggesting the system of the claims. The reference further describes a banner structure having no resemblance to the banners now claimed.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...having a plurality of signs suspended from the upper signage support assembly and extending downwardly therefrom to a lower border to define a shopper line of sight region would allow for the easy advertisement and showing of the available products as taught by Thornton and "Flea Market Slide Show",...". Thornton doesn't show a plurality of merchandise information carrying signs suspended from a plurality of upper signage support assemblies removably coupled with overhead top connector assemblies. Flea Market only shows permanent building installations which have no bearing whatsoever on the invention at hand. Hanging a sign in a permanent building does not meet the requisite recitations of claims 18-26. See the Baughman supplemental declaration in the record.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...having a retainer connection assembly fixed to each of the first pole at a location defining a bay access elevation above the surface when the poles are inserted within the sleeves would ensure the poles are securely fastened and not getting loose,...". The Examiners statement is incorrect. However, none of the references taken singly or in combination show or suggest a retainer connection assembly fixed to the poles at a location defining a bay access elevation. None of the references show or suggest a bay access elevation above a paved surface when the poles are inserted within the sleeve. The Examiner again is utilizing the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...having a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with the upper signage support assemblies would allow for the easy advertisement and showing of the available products as taught by Thornton and Duarte "page two",...". Thornton shows a slidable sign on two poles and has nothing to do with the "showing of the available products", terminology not

present in the claim. Duarte has been discussed above and provides no description whatsoever of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent first poles in parallel relationship with the upper signage support assemblies. Again, the Examiner is utilizing the applicants own disclosure as a road map in formulating a rejection.

Next, the Examiner asserts that it would have been obvious to modify Pool to show: "...having a plurality of lower couplers removably connected between the lower signage retainer assemblage and the lower border of the signs would enable the support of signage and easy removable of the signage when not required as taught by Duarte "cable snaps of banner"." Duarte simply vaguely describes the use of cable snaps spaced two feet on center in connection with banners having a square tube shape. Duarte doesn't describe or suggest a plurality of anchors spaced apart a bay distance; doesn't describe a plurality of first poles insertable within the anchor to a sleeve engagement surface; does not suggest defining a merchandising region with an entrance region, a shopper aisle and an exit region; does not describe an overhead top connector assembly; does not describe a plurality of upper signage support assemblies removably coupled with the overhead top connector assemblies to define a boundary of a merchandising region including the entrance region; does not describe a plurality of information carrying signs suspended to define a shopper line of sight region; does not describe a retainer connection assembly fixed to each first pole at a location defining a bay access elevation; and does not describe a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies. Again, the Examiner is using the applicants own disclosure as a road map in formulating a rejection. Further, there is no nexus or rationale in combining the multitude of references employed to assert an obviousness rejection.

Next, the Examiner rejects claim 19 stating that Pool as modified shows all of the claim limitations except for the support assembly having an elongate cable, a cable tensioner coupled to the cable, two spaced apart spring actuated couplers manually connectable with the top connector assembly. For reasons as given above, Pool has no resemblance or remote similarity to the instant invention as claimed. The Examiner then cites Barnes for a cable tensioning assembly. Barnes, as noted above, teaches a winch for severely tightening the cable supporting a volleyball net. Its value is only to the extent that cable can be tensioned. However, it has no relationship whatsoever to a merchandising region and its employment with two spaced apart spring actuated couplers is immediately illogical. There is no rationale in combining the multitude of references in asserting obviousness. Pool may be construed in a contorted fashion to resemble the introductory paragraph of claim 18. Further in applying the rejection, the Examiner states that it would have been obvious to modify Pool's modified structure to show: "...the support assembly having an elongate cable, a cable tensioner coupled to the cable as

taught by Barnes, two spaced apart spring actuated couplers manually connectible with the top connector assemblies because having a cable and cable tensioner with two spaced apart spring actuated couplers manually connected to the connector assemblies would ensure the proper and straight support of the signage due to the adjustability of the length of the cable.". None of the references, taken singly or in combination show or suggest the subject matter of claim 19. There are no cables in any of the references which are utilized in sign support. Again, the Examiner is utilizing the applicants' own disclosure as a road map and is simply paraphrasing the applicants own claims in applying a rejection with no valid documentary support.

Claim 20, dependant upon claim 18 looks to the same form of recitation but with application to the lower signage retainer assembly. In rejecting claim 20, the Examiner states that Pool as modified shows: "...all the claim limitations except for the support assembly having an elongate cable, a cable tensioner coupled to the cable, two spaced apart spring actuated couplers manually connectable with the retainer connector assemblies.". Apparently, the Examiner, utilizing the applicants own disclosure as a road map is "modifying" Pool without any related or supporting documentation. As stated above, there is no relationship of the cited references to suggest a "modification" of Pool. The term "modified" as utilized over and over again by the Examiner is simply a reconstruction of the reference based upon the applicants own disclosure. The volleyball cable tensioning winch of Barnes again was cited. As noted above, this is a reference that has no relationship whatsoever to a merchandising system. One queries just how Barnes can be combined with the drive through grocery of Pool. Then the Examiner states that: "...because having a cable and cable tensioner with two spaced apart spring actuated couplers manually connected to the retainer connector assemblies would ensure the proper and straight support of the signage due to the adjustability of the length of the cable". Again, none of the references, taken singly or in combination show a lower signage retainer assembly or its implementation with an elongate cable and the remaining recited components. Again, the Examiner is using the applicants' own disclosure as a road map to formulate a rejection.

In rejecting claim 21, the Examiner asserts that pool as modified shows all the claim limitations except for what in effect is the recitation of claim 21. The Examiner further points to Duarte, page two as disclosing cable snaps to support the length of banner at the top and bottom. As set forth in the supplemental Dascenzo declaration in the record, Duarte shows nothing of structure; mentions the installation of cable snaps and describes wind pockets to accommodate wind loads as opposed to the breakaway approach of the claim. In effect, Duarte teaches away from claim 21. Then the Examiner states that: "...because break away couplers coupling the signage support would allow the support to break away preventing damage to the

signage once a maximum amount of allowable force is exceeded as taught by Duarte". Duarte teaches nothing of the sort. See the supplemental Dascenzo declaration in the record. Apparently, the Examiner again is using the applicants' own disclosure as a road map in formulating a rejection.

In rejecting claims 22 and 26, the Examiner asserts that Pool as modified shows all the claim limitations except for the subject matter of 22 and 26. Pool as "modified" does not show all the claim limitations for reasons given above. In making this rejection, the Examiner states that it would have been obvious to modify Pools modified structure to show: "...each sleeve engagement surface being at an elevation with respect to the paved surface selected to effect a linear alignment of the first pole top or the sleeve engagement surface of the two anchors being at an elevation with respect to the paved surface selected to effect a common elevation of the second pole second tops". The Examiner further states: "...because it would enable the tops of the first poles to have the same height in the tops of the second poles having the same height which would result in aesthetic appearance for the retail store.". Again, the Examiner is using the applicants own disclosure as a road map for forming a rejection. The Examiner has no documentary evidence to support his own conclusions. None of the references, taken singly or in combination show anchors as described in the claims.

In rejecting claim 23, the Examiner has asserted that Pool as modified shows all the claim limitations with the exception of the subject matter of claim 23. Pool as "modified" does not show all the claim limitations whatsoever for reasons given above. The subject of the claim is the entrance banner assembly shown in Fig. 1 at 106 and 106'. There is nothing in any of the references, taken singly or in combination, that would suggest that form of entrance treatment. In applying this rejection, the Examiner has stated that it would have been obvious to modify Pools modified structure (presumably a double reconstruction of Pool based upon the applicants own disclosure) to show what is then a paraphrasing of the entirety of claim 23 with a further statement that the subject matter of the claim "...would allow for the hanging and easy removable of the signage to the pole.". Again, the Examiner is using the applicants own disclosure as a road map in formulating a rejection. There is no supporting documentation to support the Examiner's commentary.

The Examiner has rejected claims 24-25 asserting that Pool as "modified" shows all the claimed limitations except for what are the recitations of claims 24 and 25. For reasons given above, Pool as "modified" shows essentially none of the limitations of the claims in this application. None of the references, taken singly or in combination show a banner as taught in claim 23 with its appropriate connector assemblies, the higher poles, a lower banner connector assembly with components recited in claim 24, or breakaway lower couplers as recited in claim

25. In applying this rejection, the Examiner has asserted that it would have been obvious to "modify" Pools "modified" structure to show the system representing the subject matter of claims 24 and 25. Among the reasons given for this, the Examiner asserts: "...because having a lower banner connector assembly fixed to each second pole adjacent the lower banner edge would allow for the support of the banner at the lower banner edge thus resulting in the banner not moving in undesirable locations and directions, having a banner retainer assembly removably coupled between the second poles at the lower banner retainer assembly would allow for the easy hanging and removable of the banner at the pole, and having the two lower couplers removably connected and being break away coupler would enable the easy and quick assembly/disassembly of the banners at the poles and the break away coupler would ensure the banner not destroyed when the wind force is too high as the break away coupler would first break which would result in the banner not subjected to the previous major wind force." The Examiner is rejecting these claims based upon the applicants own specification. None of the references, taken singly or in combination, show or suggest the subject matter of claims 23, 24 and 25. The Examiner is utilizing the applicants own disclosure as a road map in formulating a rejection.

In a response to the next earlier Office Action mailed January 15, 2004, the applicants requested that the Examiner support his undocumented commentary under the provisions of 37 CFR §1.104 (d) (2). All of those numerous requests were ignored.

Respectfully submitted,

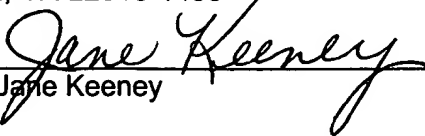
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited on May 26th, 2004 with the United States Postal Service as first class mail in an envelope addressed to:

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Alexandria, VA 22313-1450


Jane Keeney

APPENDIX

CLAIMS

1. The method for presenting merchandise having given trade dress at an outdoor paved surface, comprising the steps of:

defining a retailing geometric boundary at said paved surface;

providing a plurality of anchors about said boundary, each extending below said surface and mutually spaced apart to establish bay distances, each said anchor having a vertically disposed sleeve having a support distance located below said paved surface;

providing a plurality of first poles, each having an insertion end configured for slideable insertion to the extent of said support distance within a said sleeve and extensible, when inserted within a said sleeve, an overhead signage sight height from said surface to a top;

positioning said first poles within said anchor sleeves to define a retail floor pattern having an entrance region and a shopper aisle extending therefrom to a shopper exit region;

interconnecting a said pole top with a next adjacent said pole top with a horizontally disposed signage support to define a three-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of said geometric boundary to said shopper aisle;

suspending merchandise information signage from said signage support at said boundary along said bays;

said signage extending downwardly from said signage support within a shopper line of sight region to a lower border adjacent a bay access elevation above said surface;

positioning said merchandise within said bay below said bay access elevation and locating said merchandise in correspondence with said merchandise information signage; and

providing a cash/wrap region adjacent said shopper aisle.

2. The method of claim 1 including the steps of:

providing flag support structures at said top of said poles;

providing a plurality of flag assemblies; and

positioning said flag assemblies within said flag support structures.

3. The method of claim 2 in which said plurality flag assemblies are provided as pennants formed with nylon.

4. The method of claim 1 including the steps of:
providing a canopy; and
mounting said canopy with said poles at said cash/wrap region.
5. The method of claim 1 in which said step of suspending merchandise information signage establishes said bay access elevation as about eight feet.
6. The method of claim 1 in which said step for providing said poles with a said overhead signage sight height provides said sight height within a range of between about 10 feet and 12 feet.
7. The method of claim 2 in which said step for providing said anchors, provides said mutual spacing within a range from about 3 feet to about 20 feet.
8. The method of claim 1 including the steps of:
providing a plurality of covers each being extensible over a said anchor sleeve adjacent said surface; and
attaching a said cover over each said sleeve when not engaged with a said pole.
9. The method of claim 1 in which said step for positioning said poles defines said retail floor pattern as having a said entrance region, a said shopper aisle and a said exit region with widths of about 10 feet.
10. The method of claim 1 in which said step for interconnecting each said pole top with the next adjacent pole top is carried out with a tensioned cable assembly as said horizontally disposed signage support.
11. The method of claim 1 including the steps of:
providing a horizontally disposed lower signage support interconnecting a said pole with said next adjacent pole at about said bay access elevation; and
coupling said horizontally disposed lower signage support with said signage adjacent said lower border.

12. The method of claim 11 in which said step of coupling said horizontally disposed signage support is carried out with break-away couplers configured to break in response to the assertion of a predetermined wind load upon said signage.

13. The method of claim 12 in which said step of providing said horizontally disposed lower signage support is carried out by providing a tensioned cable assembly.

14. The method of claim 1 including the steps of:
providing two said anchors adjacent said boundary mutually spaced apart a banner width distance;
providing two second poles each having an insertion end configured for slideable insertion to the extent of said support distance within a said sleeve of one of said two anchors, said second poles being extensible when inserted within a said sleeve, a second pole height from said surface to a second pole top greater than said overhead signage sight height;
providing an upper banner support assembly extensible between said two second poles;
removably horizontally coupling said upper banner support assembly between said two second poles adjacent said second pole tops; and
suspending a remotely viewable banner from said upper banner support.

15. The method of claim 14 in which said step for providing two said anchors adjacent said boundary locates said two anchors adjacent said entrance region.

16. The method of claim 1 in which said step for providing a plurality of anchors provides said sleeves as each having a base plate at an elevation with respect to said paved surface selected to effect a linear alignment of said first pole tops.

17. The method of claim 1 in which:
said step for providing a plurality of anchors provides said anchors in regularly spaced relationship defining a geometric grid; and
said step for defining a retailing boundary defines said boundary by selecting anchors with said geometric grid.

18. A system for presenting merchandise at an outdoor paved surface, comprising:

a plurality of anchors fixed beneath said surface in a geometric pattern within a retail region boundary, at least two of said anchors being mutually spaced apart a bay distance, each said anchor including a vertically disposed sleeve having a support distance located below said surface and extending to an engagement surface;

a plurality of first poles of first height, each having a first top and an insertion end slidably inserted in supporting relationship within a select said anchor sleeve to an extent wherein said insertion end is in freely abutable contact with said sleeve engagement surface, said first poles being inserted within said anchors in mutually spaced adjacency to define a merchandising region exhibiting an entrance region, a shopper aisle and an exit region, said pole first height establishing an overhead signage sight height from said surface to said first top;

an overhead top connector assembly fixed to each said first pole adjacent said first top.

a plurality of upper signage support assemblies removably coupled with said overhead top connector assemblies to define a boundary of said merchandising region including said entrance region;

a plurality of merchandise information carrying signs suspended from select said upper signage support assemblies and extending downwardly therefrom to a lower border to define a shopper line of sight region;

a retainer connection assembly fixed to each said first pole at a location defining a bay access elevation above said surface when said first poles are inserted within said sleeves;

a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with said upper signage support assemblies; and

a plurality of lower couplers removably connected between said lower signage retainer assemblies and said lower border of said signs.

19. The system of claim 18 in which each said upper signage support assembly comprises:

an elongate cable;

a cable tensioner coupled with said cable; and

two spaced apart spring actuated couplers manually connectable with said overhead top connector assemblies.

20. The system of claim 18 in which each said lower signage retainer assembly comprises:

an elongate cable;
a cable tensioner coupled with said cable; and
two spaced apart spring actuated couplers manually connectable with said
retainer connector assemblies.

21. The system of claim 18 in which said lower couplers are configured to break away in response to the assertion of predetermined wind loads at said signs.

22. The system of claim 18 in which each said sleeve engagement surface is at an elevation with respect to said paved surface selected to effect a linear alignment of said first pole tops.

23. The system of claim 18 in which:
two said anchors are spaced apart a banner width and located adjacent said entrance region;
two second poles, each having an insertion end slideably inserted in a sleeve of one of said two anchors to an extent wherein said insertion end is in freely abutable contact with said sleeve engagement surface, said second poles extending a second pole height from said paved surface to a second top greater than said first height;
an upper banner connector assembly fixed to each said second pole adjacent said second top;
an upper banner support assembly removably coupled with said two second poles at said upper banner connector assembly thereof; and
a banner removably coupled with said upper banner support assembly and extending downwardly therefrom to a lower banner edge.

24. The system of claim 23 further comprising:
a lower banner connector assembly fixed to each said second poles adjacent said lower banner edge;
a banner retainer assembly removably coupled between said second poles at the lower banner connector assembly thereof; and
at least two said lower couplers removably connected between said banner retainer assembly and said lower banner edge.

25. The system of claim 24 in which said two lower couplers are configured to break away in response to the assertion of a predetermined wind load at said banner.

26. The system of claim 23 in which each said sleeve engagement surface of said two anchors is at an elevation with respect to said paved surface selected to affect a common elevation of said second pole second tops.